

Appl. No. 10/766,722
Amdt. Date 09/30/2004
Reply to Office Action of 08/02/2004

REMARKS / ARGUMENTS

Claims 1-8 are pending in this application. Claims 1-6 stand rejected, and claims 7 and 8 are objected to. Applicant gratefully acknowledges the Examiner's indication of allowable subject matter in claims 7 and 8.

In the Office Action mailed August 2, 2004, the Examiner objected to claims 1 and 7. Claim 1 was objected to on the grounds that the limitation of "the masonry anchor" in line 9 has insufficient antecedent basis in the claim. Applicant respectfully disagrees, and submits that the recitation of "a connecting bracket for use in a masonry anchor" in the preamble of claim 1 provides sufficient antecedent basis.

In addition, the Examiner objected to claim 1 on the grounds that the claim has inconsistent language due to the preamble being drawn to a subcombination connecting bracket, and the subsequent recitation of connecting the bracket with a support frame, complimentary connector and wall. The Examiner considered the claim as drawn to the combination, and required Applicant to clarify the intention. Applicant states that claim 1 is directed to the subcombination of the connecting bracket, and submits that the claim is not indefinite. The recitation of a masonry anchor, support frame, complimentary connector, and first and second walls in claim 1, is for the purpose of describing functional characteristics of the connecting bracket. These features do not constitute structural limitations of the claimed invention. Accordingly, these features are not positively recited in the claim, but rather are stated only with

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respect to the function of the invention (e.g. "A connecting bracket for use in a masonry anchor for connecting first and second spaced-apart walls..."). There is nothing inherently wrong with defining some part of an invention in functional terms. M.P.E.P. § 2173.05(g). Functional language does not, in and of itself, render a claim improper. *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). As such, Applicant respectfully submits that claim 1 is not indefinite in its present form.

Claim 7 was objected to on the grounds that the limitations of "the hooks" and "the eyes" in line 22 lacks antecedent basis. Applicant has amended claim 7 to make the appropriate corrections.

The Examiner rejected claims 1-6 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-18, respectively, of U.S. Patent No. 6,735,915 to Johnson, III. In response, Applicant submits the enclosed terminal disclaimer executed by the undersigned attorney of record. Masonry Reinforcing Corp. of America is the owner of 100 percent interest in the above-referenced application and U.S. Patent No. 6,735,915 by an assignment of the inventor recorded in the U.S. Patent and Trademark Office. Accordingly, the enclosed executed terminal disclaimer overcomes the rejection of claims 1-6 based on nonstatutory double patenting.

For the reasons stated above, the application is in a condition for allowance. Therefore, Applicant respectfully requests that a timely Notice of Allowance be issued in

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this application.

Respectfully submitted,


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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office to Technology Center 3600, Fax No. (703) 872-9308 on September 30, 2004. Date of Signature: 09/30/2004 .

Signature: Myra P. Howell
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